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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,498	09/08/2003	Michael Tod Morman	19152	9345

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/657,498

Applicant(s)

MORMAN ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 031405.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-5, 7-22 and 24 have been considered but are moot in view of the new ground(s) of rejection.

a. Claim 1 has been amended to recite that the absorbent material comprises absorbent particles and to recite that an average pore size in the layer of fine fibers that is less than the average diameter of the absorbent particles.

b. Claim 16 has been amended to claim that the pore sizes of the layer of meltblown fibers are less than about 25 microns and to claim the property of SAM retention level in the nonwoven fabric laminate.

c. Claims 6 and 23 are canceled.

d. It is noted herein that the claims remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 10/657,622. The response filed June 02, 2005 is non-responsive to such rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-5, 7-22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over THOMAS et al. (US 6,049,024) in view of GOLDWASSER (US 6,183,847 B1) and KELLENGERGER (US 5,147,343).

THOMAS et al. is directed to a composite nonwoven fabric for use as a one-piece top sheet and barrier fabric for disposable absorbent articles. (Abstract) In one embodiment of their invention, the reference teaches a spunbond-meltblown-spunbond trilaminate structure. (Col. 3, lines 65-67). The reference teaches the use of meltblown filaments of from about 2-15 microns in diameter. (Col. 5, lines 62-67) The spunbond filaments can be prepared from thermoplastic polymers. (Col. 6, lines 18-38) The nonwoven composite fabric can have an overall basis weight of from about 13 to 22 gsm. The spunbond and meltblown web components of the composite nonwoven fabric can be present in a ratio of from about 11 gsm to 1.5 gsm, respectively, up to about 19 gsm to 3 gsm. (Col. 6, lines 47-55) This is interpreted by the Examiner as the basis weight of the meltblown web being in the range from 1.5-3 gsm. The reference also teaches the use of a surfactant to provide hydrophilicity to the composite. (Col. 7, lines 1-5) THOMAS et al. further teaches that the disposable absorbent articles comprise a topsheet, a liquid impervious back sheet and a core of absorbent material. (Col. 8, lines 1-3)

It is the Examiner's interpretation that the THOMAS et al. reference teaches a structure with a liquid impervious sheet, a liquid pervious bodyside liner and an absorbent material in between. The reference teaches a bodyside liner or top sheet that comprises meltblown fibers with a diameter from about 2 to 15 microns and a SMS construction.

While the reference teaches a basis weight of less than 2.0 gsm (including 1.5 gsm), for the thin layer of fine fibers/meltblown layer, it is silent to a basis weight of less than 1.5 gsm.

THOMAS et al. is also silent the inclusion of absorbent particles and the pore size in the layer of fine fibers in relation to such absorbent particles.

GOLDWASSER discloses a coversheet or coverstock or top sheet (i.e., that portion of the product which is in contact with a person's skin) for use in the manufacturing of disposable absorbent products such as baby diapers and sanitary napkins. (Col. 1, lines 13-18) The reference teaches using a web that is a multi-component structure that includes at least one discontinuous fine fiber layer having a melt-blown content of greater than zero but less than 1.5 gsm. This provides for enhanced liquid containment and enhanced liquid transport in a single web. (Col. 2, lines 52-56) The reference teaches a SMS construction and also teaches the optional use of carded layers instead of solely spun-bonded layers as the outer layers. (Col. 5, lines 15-45)

KELLENBERGER disclose an absorbent composite that comprises a porous matrix of fibers, and a superabsorbent material dispersed among the interfiber spaces (pores) and at least about 50% of the superabsorbent material has a size greater than the median pore size of the matrix. (Abstract) The porous matrix fibers may be a batt of fluff. (Refer to Col. 4, lines 20-30) The reference further teaches that the superabsorbent material should have a size in the unswollen condition, which is greater than the median interfiber spaces (pores) of the matrix. (Col. 7, lines 29-36) It is further noted that the reference teaches using particles with a size greater than about 100 microns. (Col. 7, lines 65-66) With regards to claim 16, while the reference is silent to using pore sizes of the layer of meltblown fibers being less than about 25 microns, such values would have been obvious from the teachings of the reference and one

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could conclude that values in the range claimed herein would have been obvious given that the particles could have diameters greater than about 100 microns.

Since the references are directed to absorbent materials, the purposes disclosed by KELLENBERGER and GOLDWASSER would have been recognized in the pertinent art of THOMAS et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the basis weight of the meltblown web component of THOMAS et al. and lower its basis weight to the ranges taught by GOLDWASSER motivated by the desire of producing a material that has a lighter weight while still serves to enhance both liquid containment and liquid transport. Further, it would have also been obvious at the time the invention was made to a person having ordinary skill in the art to modify the absorbent material of THOMAS et al. and provide it absorbent particles in which the pore size of the layer of fine fibers is less than the average diameter of the absorbent particles (or in which the diameter of the particles is greater than the pores of the fibers), with the motivation of minimizing the effects of gel-blocking as disclosed by KELLENBERGER (Col. 7, lines 29-31)

Although the prior art of record does not explicitly teach the claimed SAM retention it is reasonable to presume that this property is inherent to a material produced from the teachings of the prior art above. Support for said presumption is found in the use of like materials (i.e. an SMS laminate construction with a meltblown layer with similar basis weight). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of a SAM retention level of greater than 95 percent (or 98 percent), would obviously have been present once the laminate product is provided. Note *In re Best*, 195 USPQ at

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433, footnote 4 (CCPA 1977) as to the providing of this rejection made above under 35 USC

102. Reliance upon inherency is not improper even though rejection is based on Section 103

instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-5, 7-22 and 24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16, 18-30 and 32 of copending Application No. 10/657,622. Although the conflicting claims are not identical, they are not patentably distinct from each other because the co-pending application uses the language of "a liquid pervious bodyside liner comprising a nonwoven fabric laminate" that equates to the "liquid pervious, nonwoven fabric laminate" in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GOLDWASSER et al. (US 2003/0186612 A1) filed July 15, 2002 - discloses a

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hydrophilic lightweight spunbond-meltblown-spunbond (SMS) nonwoven material useful in personal care absorbent products. [0001] The reference teaches a basis weight for the meltblown layer that is most preferably less than 2.5 gsm but greater than zero. [0008] The reference also teaches that the lightweight nonwoven material can act at least in part as a barrier against the migration or movement of solid particles or components contained in a product in which the nonwoven material is used. ([0012] and [0032]).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

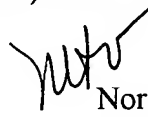
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Primary Examiner
Art Unit 1771

August 18, 2005